

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

HSBC BANK PLC, *et al.*,

Defendants.

Adv. Pro. No. 09-01364 (SMB)

STIPULATION AND ORDER REGARDING DISMISSAL OF CERTAIN CLAIMS

Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the substantively consolidated estate of Bernard L. Madoff individually, by and through his counsel, Baker & Hostetler LLP, and (i) Thema Asset Management (Bermuda) Ltd., (ii) Thema Asset Management Ltd., (iii) Equus Asset Management Ltd., and (iv) Hermes Asset Management Limited (collectively the “Defendants,” and with the Trustee, the “Parties”), hereby stipulate and agree to the following:

WHEREAS, on July 15, 2009, the Trustee initiated the above-captioned adversary proceeding by filing a complaint in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on December 5, 2010, the Trustee filed an amended complaint which, among other things, named the Defendants identified in the first paragraph of this Stipulated Order, and asserted claims for unjust enrichment (Count Twenty), money had and received (County Twenty-One), aiding and abetting breach of fiduciary duty (Count Twenty-Two), aiding and abetting fraud (Count Twenty-Three), and Contribution (Count Twenty-Four), against the Defendants and others;

WHEREAS, on April 14, 2011, on the motions of various defendants, the United States District Court for the Southern District of New York (Rakoff, J.) entered an order pursuant to 28 U.S.C. § 157(d) withdrawing the reference in this adversary proceeding to determine whether the Trustee had standing to assert the claims set forth in Counts Twenty through Twenty-Four;

WHEREAS, various defendants moved to dismiss Counts Twenty through Twenty-Four of the amended complaint, but the Defendants did not move to dismiss;

WHEREAS, on July 28, 2011, the United States District Court for the Southern District of New York (Rakoff, J.) entered an Opinion and Order (the “Opinion and Order”) dismissing Counts Twenty through Twenty-Four of the Trustee’s Amended Complaint as to the moving defendants;

WHEREAS, on June 20, 2013, the United States Circuit Court of Appeals for the Second Circuit affirmed the Opinion and Order;

WHEREAS, on June 30, 2014, the Supreme Court of the United States denied *certiorari* of the Trustee’s appeal of the Second Circuit’s ruling;

WHEREAS, the Opinion and Order states in footnote 8 that “[a]lthough it seems clear that these claims would also have to be dismissed against any other defendant who appeared and so moved, no other such defendant has so moved”;

WHEREAS, the Defendants have requested that the Trustee dismiss Counts Twenty through Twenty-Four as to them;

NOW, for the reasons set forth herein, the Parties agree and stipulate and the Bankruptcy Court hereby orders:

1. Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, as incorporated by Rule 7041 of the Federal Rules of Bankruptcy Procedure, Counts Twenty through Twenty-Four of the Amended Complaint are dismissed with prejudice as to the Defendants.

2. This Stipulation affects only Counts Twenty through Twenty-Four of the Amended Complaint.

[Signature Page Follows]

Dated: February 7, 2017
New York, New York

<p><u>/s/ Oren J. Warshavsky</u> BAKER & HOSTETLER LLP 45 Rockefeller Plaza New York, New York 10111 Telephone: (212) 589-4200 Facsimile: (212) 589-4201 Oren J. Warshavsky Email: owarshavsky@bakerlaw.com Geoffrey A. North Email: gnorth@bakerlaw.com</p>	<p><u>/s/ Robin Spiegel</u> WILLKIE FARR & GALLAGHER LLP 787 Seventh Avenue New York, New York 10019 Telephone: (212) 728-8000 Facsimile: (212) 728-8111 Sameer Advani Email: sadvani@willkie.com Robin Spiegel Email: rspigel@willkie.com</p>
<p><i>Attorneys for Plaintiff Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff</i></p>	<p><i>Attorneys for Thema Asset Management (Bermuda) Ltd., Thema Asset Management Ltd., Equus Asset Management Ltd., and Hermes Asset Management Limited</i></p>

SO ORDERED

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Dated: February 7th, 2017
New York, New York